UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KATHLEEN ROSS, an individual, Plaintiff,	CASE NO.:
vs.	Judge:
	Magistrate:
DOCTOR'S ASSOCIATES INC., SUBWAY REAL ESTATE CORP., DMCRL HOLDINGS L.L.C., and A & Y SUB CORPORATION, Defendants.	

COMPLAINT

"I now lift my pen to sign this Americans with Disabilities Act and say: Let the shameful wall of exclusion finally come tumbling down. God bless you all."

- President George H. W. Bush, July 26, 1990

Plaintiff, KATHLEEN ROSS, by and through her undersigned counsel, hereby files this Complaint and sues DOCTOR'S ASSOCIATES INC. ("DOCTOR"), SUBWAY REAL ESTATE CORP. ("SUBWAY"), DMCRL HOLDINGS L.L.C. ("DMCRL"), and A & Y SUB CORPORATION ("A&Y") (collectively referred to as "DEFENDANTS"), for declaratory and injunctive relief, compensatory damages, statutory damages, punitive damages, attorneys' fees, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq*. ("ADA"), the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq*. ("NYSHRL"), the New York State Civil Rights Law, N.Y. Civ. Rights Law § 40 *et seq*. ("NYSCRL"), and the New

York City Human Rights Law, New York City, N.Y., Code § 8-101 *et seq.* ("NYCHRL"), and alleges:

JURISDICTION AND PARTIES

1. This is an action for declaratory and injunctive relief pursuant to Title III of the Americans With Disabilities Act, 42 U.S.C. §12181 *et seq*. This Court is vested with original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

2. This is an action for injunctive relief, compensatory damages, statutory damages, and punitive damages pursuant to the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.*, New York State Civil Rights Law, N.Y. Civ. Rights Law § 40 *et seq*., and the New York City Human Rights Law, New York City, N.Y., Code § 8-101 *et seq*. This Court is vested with supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)-(2).

4. All events giving rise to this lawsuit occurred in the Eastern District of New York.

5. Plaintiff, KATHLEEN ROSS, (hereinafter referred to as "MS. ROSS"), is a resident of the State of New York, Queens County.

6. MS. ROSS is a qualified individual with a disability under the ADA, the NYSHRL, the NYSCRL, and the NYCHRL. MS. ROSS is afflicted with cerebral palsy and uses a walker for her primary means of mobility.

7. Due to her disability, MS. ROSS is substantially impaired in several major life activities and requires a walker for mobility. Specifically, MS. ROSS is unable to walk, stand, or use her legs without use of her walker.

8. Upon information and belief, DOCTOR is a Florida corporation authorized to do and doing business in Queens Borough. Upon information and belief, DOCTOR is

incorporated in the state of Florida, and is domiciled at 700 S. Royal Poinciana Blvd., Miami Springs, FL 33166.

9. Upon information and belief, DOCTOR is the franchisor of approximately 20,000 "Subway" restaurants, including the Subway # 49361, located at 147-03 45th Avenue, Flushing, NY 11355 (hereinafter "Subway # 49361" or "Property"), which is the subject of this Complaint.

10. Upon information and belief, SUBWAY is a Delaware corporation authorized to do and doing business in Queens Borough. Upon information and belief, SUBWAY is incorporated in the state of Delaware, and is domiciled at 325 Sub Way, Milford, CT 06461.

11. Upon information and belief, SUBWAY is a lessee at the Property.

12. Upon information and belief, DMCRL is a New York limited liability company.

13. Upon information and belief, DMCRL is the owner of the real properties and improvements located at 147-03 45th Avenue, Flushing, NY 11355 (the "Property").

14. Upon information and belief, A&Y is a New York corporation.

15. Upon information and belief, A&Y is an operator and lessee of Subway # 49361.

16. Upon information and belief, A&Y entered into a sublease with SUBWAY to lease the Property.

17. Upon information and belief, A&Y entered into a franchise agreement with DOCTOR to use the Subway trademark and system at the Subway # 49361.

18. Upon information and belief, under the franchise agreement between DOCTOR and

A&Y, DOCTOR can control how A&Y makes modifications to the Subway # 49361 located at the Property.

19. Upon information and belief, DOCTOR is an operator of the Subway # 49361 located at the Property.

20. Subway # 49361 is located at 147-03 45th Avenue, Flushing, NY 11355 (the "Property").

21. Subway # 49361 is a restaurant and retail establishment devoted to the preparation and sale of sandwiches, salads, and other food items.

22. The Property is a place of public accommodation located within New York City, New York State.

23. DEFENDANTS are obligated to comply with the ADA, the NYSHRL the NYSCRL and the NYCHRL.

24. In July of 2007, DOCTOR and the United States of America entered into a settlement agreement (the "Settlement Agreement"), in resolution of claims that Subway restaurants were not accessible to individuals with disabilities in violation of Title III of the ADA. See Exhibit A.

25. Under the Settlement Agreement, DOCTOR made certain admissions regarding its role in ensuring that Subway restaurants provide accessibility for the disabled. Specifically, DOCTOR made the following admission:

> *"[DOCTOR] admits that it participates in the initial design of the Shops, and contends that its designs have been ADA-compliant since at least 1993."*[1]

1 Exhibit A, ¶ 6.

26. Under the Settlement Agreement, DOCTOR agreed to require that its franchisees modify their restaurants to improve access for the disabled. Further, under the Settlement Agreement, DOCTOR agreed to exert control over *how* its franchisees modify their restaurants to improve accessibility for the disabled. Specifically, the Settlement Agreement states:

> *"[DOCTOR] shall institute an ADA Evaluation and Remediation Program, whereby it will (1) require its Franchisees . . . to evaluate . . .* ***accessibility of the approach and entryway to Shops*** *. . . and (2) require Franchisees to make remediations that will make these areas compliant with the Standards, as provided in Paragraphs 51 and 52, as applicable."*[2]

Paragraph 51 provides:

> *"[DOCTOR] will inform Franchisees that they are required to make remediations . . .* ***necessary to provide access into the building****, including modifications to the approach of the entrance door".*[3]

27. Under the Settlement agreement, DOCTOR agreed that all required remediations would be complete "within five years" of the Settlement Agreement.[4]

28. It is now almost ten (10) years since the Settlement Agreement (and over 26 years from the passage of the ADA), and the entryway to Subway # 49361 is still completely inaccessible to people with mobility-related disabilities, like MS. ROSS, as there are two (2) steps up into the entrance of the Subway # 49361, without the required access ramp.

COUNT I - VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT

29. MS. ROSS realleges and reavers Paragraphs 1 - 28 as if they were expressly restated

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2 Id. at ¶ 41 (emphasis added).
3 Id. at ¶ 51 (emphasis added).
4 Id. at ¶ 46.

herein.

30. The Property is a place of public accommodation, subject to the ADA, generally located at: 147-03 45th Avenue, Flushing, NY 11355.

31. MS. ROSS lives within a close geographic proximity of the Property. MS. ROSS lives less than seven and one-half (7.5) miles away from the Property.

32. MS. ROSS frequently travels past the Property due to its close proximity to her orthopedist's office.

33. MS. ROSS desires to enter the Property to purchase food and to dine at the Subway # 49361 restaurant.

34. MS. ROSS has desired to enter the Property numerous times in the past and presently desires to enter the Property.

35. MS. ROSS has personally observed and is aware of mobility-related barriers at the Property, as discussed below in Paragraph 43.

36. MS. ROSS is presently aware that if she were to try to enter the Property, she would experience serious difficulty accessing the goods and utilizing the services therein due to the architectural barriers discussed in Paragraph 43 of this Complaint, which still exist.

37. MS. ROSS is deterred from entering the Property due to the architectural barriers discussed in Paragraph 43 of this Complaint. Upon information and belief, MS. ROSS has visited the Property and been deterred from entry due to the architectural barriers as recently as January 13, 2017.

38. MS. ROSS intends to and will enter the Property to utilize the goods and services in the future, but fears that she will encounter the same barriers to access which are the subject

of this action.

39. The barriers discussed below in Paragraph 43 are excluding MS. ROSS from the programs, services, and activities offered at the Subway # 49361 restaurant.

40. The barriers discussed below in Paragraph 43 are excluding MS. ROSS from the equal opportunity to participate in, or benefit from, the goods, services, and accommodations which are offered to the general public at the Subway # 49361 restaurant.

41. MS. ROSS plans to and will visit the Property in the future as a patron and also as an ADA tester to determine if the barriers to access alleged herein have been modified.

42. MS. ROSS presently fears that she will encounter the mobility-related barriers which exist at the Property when she returns to the Property in the near future.

43. Upon information and belief, Defendants are in violation of 42 U.S.C. § 12181 *et seq*. and 28 C.F.R. § 36.302 *et seq*., and the Property is not accessible due to, but not limited to, the following barriers, which presently exist:

A. There are two (2) steps up into the main entrance of the Subway # 49361 restaurant, without the required access ramp;

B. There is no entrance into the Subway # 49361 restaurant which is accessible to people with mobility-related disabilities;

C. There is no sign on the main entrance of the Subway # 49361 restaurant directing patrons with mobility-related disabilities to an accessible entrance;

D. Other mobility-related ADA barriers, including those in the interior of the Subway # 49361, to be identified following a complete inspection of the Property.

44. MS. ROSS continues to desire to visit the Property, but will continue to experience serious difficulty until the barriers discussed in Paragraph 43 are removed.

45. MS. ROSS intends to and will visit the Property to utilize the goods and services in the future, but fears that Defendants will continue to discriminate against her by failing to modify the barriers at the property.

46. Upon information and belief, all barriers to access and ADA violations still exist and have not been remedied or altered in such a way as to effectuate compliance with the provisions of the ADA, even though removal is readily achievable.

47. Upon information and belief, removal of the discriminatory barriers to access located at the Property is readily achievable, reasonably feasible, could be easily accomplished, and would not place an undue burden on Defendants.

48. Upon information and belief, removal of the barriers to access located at the Property would provide MS. ROSS with an equal opportunity to participate in, or benefit from, the goods, services, and accommodations which are offered to the general public at the Subway # 49361 restaurant.

49. Upon information and belief, Defendants have failed to adopt any alternatives to barrier removal which would provide MS. ROSS with equal access to the accommodations which are offered for public use at the Subway # 49361 restaurant.

50. Independent of her intent to return as a patron to the Property, MS. ROSS additionally intends to return as an ADA tester to determine whether the barriers to access stated herein have been remedied.

51. MS. ROSS has retained the undersigned counsel and is entitled to recover reasonable attorneys' fees, costs and litigation expenses from Defendant pursuant to 42 U.S.C. § 12205.

COUNT II - VIOLATION OF NEW YORK STATE HUMAN RIGHTS LAW

(NEW YORK STATE EXECUTIVE LAW, §§ 296-297)

52. MS. ROSS hereby incorporates by reference all allegations contained in all preceding paragraphs of this Complaint as if they were expressly set forth herein.

53. As owners, lessees, proprietors, managers, and/or operators of a place of public accommodation within the jurisdiction of the State of New York, DEFENDANTS are obligated to comply with the provisions of the NYSHRL, N.Y. Exec. Law § 296(2).

54. N.Y. Exec. Law § 296(2) provides: "It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, . . . because of the . . . disability . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof."

55. The conduct alleged herein discriminates against MS. ROSS on account of her disability.

56. The conduct alleged herein violates the NYSHRL, N.Y. Exec. Law § 296(2).

57. The DEFENDANTS have violated the NYSHRL by depriving MS. ROSS of the full and equal enjoyment of the accommodations, advantages, facilities, and privileges offered by DEFENDANTS at the Property, namely the ability to enter into and dine in at the Subway # 49361 restaurant.

58. The DEFENDANTS have violated the NYSHRL by failing to remove the architectural

barriers at the Property.

59. The DEFENDANTS have further violated the NYSHRL by failing to make the Property accessible through alternative methods to barrier removal.

60. Upon information and belief, removal of the discriminatory barriers to access located on the Property is readily achievable, reasonably feasible, could be easily accomplished, and would not place an undue burden on DEFENDANTS.

61. DEFENDANTS' conduct has resulted in a cognizable injury to MS. ROSS.

62. MS. ROSS has been damaged and will continue to be damaged by this discrimination as more fully set forth above.

63. As a direct and proximate result of DEFENDANTS' unlawful discrimination in violation of the NYSHRL, MS. ROSS has suffered mental anguish, inconvenience, emotional distress, frustration, anxiety, and humiliation.

64. The 2007 Settlement Agreement between DOCTOR and the United States of America put or should have put DEFENDANTS on notice that architectural barriers that discriminate against persons with mobility disabilities exist or may exist at the Property, including but not limited to the specific barriers alleged above in Paragraph 43.

65. Upon information and belief, DEFENDANTS have refused to make the Property accessible to persons with mobility disabilities despite being aware that the Property discriminates against persons with mobility disabilities in violation of federal, state, and/or city laws.

66. Upon information and belief, DEFENDANTS have refused to provide access for people with mobility-related disabilities into the Subway # 49361 restaurant, despite having specifically agreed to do so by 2012 under the Settlement Agreement between DOCTOR

and the United States of America.

67. DEFENDANTS' unlawful discrimination against MS. ROSS in violation of the NYSHRL is willful, wanton, or malicious.

68. MS. ROSS prays for judgment for damages to pursuant to N.Y. Exec. Law § 297(4), and all other relief allowed by law.

COUNT III - VIOLATION OF NEW YORK STATE CIVIL RIGHTS LAW

(N.Y. Civ. Rights§§ 40-c and 40-d)

69. MS. ROSS hereby incorporates by reference all allegations contained in all preceding paragraphs of this Complaint as if they were expressly set forth herein.

70. As owners, lessees, proprietors, managers, and/or operators of a place of public accommodation within the jurisdiction of the State of New York, DEFENDANTS are obligated to comply with the provisions of the NYSCRL, N.Y. Civ. Rights §40 *et seq*.

71. MS. ROSS has complied with the notice requirements of N. Y. Civ. Rights section 40-d, as notice of this action was served upon the attorney general prior to or concurrently with the initiation of this suit.

72. Section 40 of the NYSCRL states that "All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodations. . . ."

73. Section 40-c of the NYSCRL states that "[n]o person shall, because of . . . disability . . . be subjected to any discrimination in his or her civil rights . . . by any firm, corporation or institution. . . ."

74. The conduct alleged herein discriminates against MS. ROSS on account of her disability.

75. The conduct alleged herein violates the NYSCRL.

76. The DEFENDANTS have violated the NYSCRL by depriving MS. ROSS of the full and equal enjoyment of the accommodations, advantages, facilities, and privileges offered by DEFENDANTS at the Property, namely the ability to enter into and dine in at the Subway # 49361 restaurant.

77. The DEFENDANTS have violated the NYSCRL section 40-c, *inter alia*, by subjecting MS. ROSS, as a person with a disability, to discrimination in her civil rights.

78. The DEFENDANTS have further violated the NYSCRL by being in violation of the rights provided to persons with disabilities under the ADA and the New York State Human Rights Law, N.Y. Exec. Law § 296.

79. DEFENDANTS' conduct has resulted in a cognizable injury to MS. ROSS.

80. MS. ROSS has been damaged and will continue to be damaged by this discrimination as more fully set forth above.

81. MS. ROSS prays for judgment pursuant to N.Y. Civ. Rights section 40-d, including statutory damages, and all other relief allowed by law.

COUNT IV - VIOLATION OF NEW YORK CITY HUMAN RIGHTS LAW

(New York City, N.Y., Code § 8-502)

82. MS. ROSS hereby incorporates by reference all allegations contained in all preceding paragraphs of this Complaint as if they were expressly set forth herein.

83. As owners, lessees, proprietors, managers, and/or operators of a place of public accommodation within the jurisdiction of the City of New York, DEFENDANTS are obligated to comply with the provisions of the NYCHRL, New York City, N.Y., Code § 8-107(4).

84. MS. ROSS will comply with the notice requirements of N.Y. Code § 8-502, as a copy of

this Complaint will be served upon the authorized representatives of the city commission on human rights and the corporation counsel within ten days of commencing this action.

85. N.Y. Code § 8-107(4) provides: "It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation because of the . . . disability . . . of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof."

86. The conduct alleged herein discriminates against MS. ROSS on account of her disability.

87. The conduct alleged herein violates the NYCHRL, N.Y. Code § 8-107.

88. The DEFENDANTS have violated the NYCHRL, N.Y. Code § 8-107(4) by depriving MS. ROSS of the full and equal enjoyment of the accommodations, advantages, facilities, and privileges offered by DEFEDNANTS at the Property, namely the ability to enter into and dine in at the Subway # 49361 restaurant.

89. The DEFENDANTS have violated the NYCHRL, N.Y., Code § 8-107(4) by failing to remove the architectural barriers at the Property.

90. The DEFENDANTS have violated the NYCHRL, N.Y. Code § 8-107 (17) because, upon information and belief, DEFENDANTS' policies or practices regarding the removal of architectural barriers at the Property has a disparate impact on persons with mobility related disabilities.

91. DEFENDANTS' conduct has resulted in a cognizable injury to MS. ROSS.

92. MS. ROSS has been damaged and will continue to be damaged by this discrimination as more fully set forth above.

93. As a direct and proximate result of DEFENDANTS' unlawful discrimination in violation

of the NYCHRL, MS. ROSS has suffered mental anguish, inconvenience, emotional distress, frustration, anxiety, and humiliation.

94. The 2007 Settlement Agreement between DOCTOR and the United States of America put or should have put DEFENDANTS on notice that architectural barriers that discriminate against persons with mobility disabilities exist or may exist at the Property, including but not limited to the specific barriers alleged above in Paragraph 43.

95. Upon information and belief, DEFENDANTS have refused to make the Property accessible to persons with mobility disabilities despite being aware that the Property discriminates against persons with mobility disabilities in violation of federal, state, and/or city laws.

96. Upon information and belief, DEFENDANTS have refused to provide access for people with mobility-related disabilities into the Subway # 49361 restaurant, despite having specifically agreed to do so by 2012 under the Settlement Agreement between DOCTOR and the United States of America.

97. DEFENDANTS' unlawful discrimination against MS. ROSS in violation of the NYCHRL is willful, wanton, or malicious.

98. DEFENDANTS' unlawful discrimination against MS. ROSS in violation of the NYCHRL is intentional.

99. DEFENDANTS' unlawful discrimination against MS. ROSS in violation of the NYCHRL has been made with reckless indifference to her protected rights as a person with a disability.

100. MS. ROSS prays for judgment pursuant to N.Y. Code § 8-502(a) for injunctive relief, for damages, including punitive damages, and for all other relief allowed by law.

101. MS. ROSS has retained the undersigned counsel and is entitled to recover reasonable attorneys' fees, costs and litigation expenses from DEFENDANTS pursuant to N.Y. Code § 8-502(g).

WHEREFORE, MS. ROSS demands judgment against DEFENDANTS, and requests the following relief:

A. That this Court declare that the Property owned, leased, managed, and/or operated by DEFENDANTS is in violation of the ADA, the NYSHRL, the NYSCRL, and the NYCHRL;

B. That this Court enter an Order directing DEFENDANTS to alter the Property to make it accessible to and useable by individuals with mobility disabilities to the full extent required by Title III of the ADA and the NYCHRL;

C. That this Court enter an Order awarding MS. ROSS compensatory damages, as provided for under N.Y. Exec. Law § 297(4) and New York City, N.Y., Code § 8-502(a);

D. That this Court enter an Order awarding MS. ROSS statutory damages, as provided for under N.Y. Civ. Rights section 40-d;

E. That this Court enter an Order awarding MS. ROSS punitive damages, as provided for under New York City, N.Y., Code § 8-502(a).

F. That this Court award reasonable attorneys' fees, costs (including expert fees), and other expenses of suit, to MS. ROSS, pursuant to 42 U.S.C. § 12205 and New York City, N.Y., Code § 8-502(g); and

G. That this Court award such other and further relief as it deems necessary, just and proper.

Respectfully Submitted,

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By: /s/ Andrew D. Bizer
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